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110TH CONGRESS
2D SESSION

H. R. 7067

To amend title XVIII of the Social Security Act to expand the development of quality measures for inpatient hospital services, to implement a performance-based payment methodology for the provision of such services under the Medicare Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2008

Mr. ALTMIRE introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend title XVIII of the Social Security Act to expand the development of quality measures for inpatient hospital services, to implement a performance-based payment methodology for the provision of such services under the Medicare Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Quality FIRST (From Incentives, Reporting, Standards, and Technology) Act of 2008".

SEC. 2. EXPANSION OF REPORTING AND DEVELOPMENT OF QUALITY MEASURES FOR INPATIENT HOSPITAL SERVICES; IMPLEMENTATION OF PERFORMANCE-BASED PAYMENT UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR SUCH SERVICES.

(a) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1886 the following new section:

"PERFORMANCE-BASED PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

"SEC. 1886A. (a) EXPANSION OF REPORTING AND DEVELOPMENT OF QUALITY MEASURES.—

"(1) REQUIREMENT TO REPORT DATA ON QUALITY MEASURES.—For purposes of section 1886(b)(3)(B)(i) for fiscal year 2010 and each subsequent fiscal year, in the case of a hospital that does not submit, to the Secretary in accordance with this section, data required to be submitted on specified quality measures (as defined in paragraph (4)(A)) with respect to such fiscal year, the applicable percentage increase under section 1886(b)(3)(B)(i) for such fiscal year shall be reduced by 2.0 percentage points.

"(2) APPLICATION OF REDUCTION ONLY TO FISCAL YEAR INVOLVED.—Any reduction under

paragraph (1) shall apply only with respect to the fiscal year involved. The Secretary shall not take into account such reduction in computing the applicable percentage increase under section 1886(b)(3)(B)(i) for a subsequent fiscal year.

"(3) DATA SUBMISSION.—Each hospital shall submit to the Secretary the required data on specified quality measures under this section in the form and manner provided under subsection (h).

"(4) DEFINITIONS.—In this section:

"(A) The term 'specified quality measures' means quality measures—

"(i) specified under clause (vii)(II) of section 1886(b)(3)(B);

"(ii) selected under clause (viii) of such section; and

"(iii) selected under subsection (b).

"(B) The term 'hospital' means a subsection (d) hospital (as defined in section 1886(d)(1)(B)).

"(b) ADDITION OF NEW QUALITY MEASURES.—

"(1) IN GENERAL.—In addition to the specified quality measures described in clauses (i) and (ii) of subsection (a)(4)(A), the Secretary shall select under this subsection such quality measures as the Sec-

retary determines to be appropriate for the measurement of the quality of care furnished by hospitals in inpatient settings.

"(2) EXPANSION AND REFINEMENT OF PERFORMANCE MEASURES.—Effective for payments beginning with fiscal year 2009, in selecting additional quality measures under paragraph (1), the Secretary shall expand and revise the baseline set of performance measures adopted under section 1886(b)(3)(B)(viii)(IV). Subject to the succeeding provisions of this subsection, the Secretary shall add such additional measures that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus-building organizations (as defined in paragraph (4)(B)).

"(3) REQUIREMENT FOR EVIDENCE-BASED MEASURES.—

"(A) IN GENERAL.—With respect to fiscal year 2009 and each subsequent fiscal year, the Secretary may not add any quality measure under this subsection unless that quality measure—

"(i) is evidence-based and statistically valid;

"(ii) subject to paragraph (7)(C), is endorsed by the National Quality Forum or such other similar consensus-building organization as the Secretary may designate;

"(iii) is recommended for use by the Hospital Quality Alliance; and

"(iv) has been sufficiently tested to ensure the measure is accurate and efficacious and to determine the resources required of a hospital to collect and report data on the measure.

"(B) PROHIBITION ON USE OF QUALITY MEASURE FOR PUBLIC REPORTING OR PERFORMANCE-BASED PAYMENT UNLESS ENDORSED AND RECOMMENDED.—A quality measure proposed to be added under this subsection may not be made available to the public under subsection (e) or otherwise, or used in the performance-based payment program under subsection (f), before the date on which the measure has been endorsed as provided in subparagraph (A)(ii) and recommended as provided in subparagraph (A)(iii).

"(4) REQUIREMENT FOR COLLABORATION WITH CONSENSUS ORGANIZATIONS.—

"(A) IN GENERAL.—With respect to fiscal year 2010 and each subsequent fiscal year, the Secretary shall collaborate with consensus-building organizations to develop new quality measures in each of the following areas of inpatient hospital services:

"(i) Efficiency.

"(ii) Clinical effectiveness.

"(iii) Patient-centeredness.

"(iv) Care coordination.

"(v) Patient safety.

"(vi) Performance in areas where the Secretary identifies a need for an appropriate quality measure.

"(B) CONSENSUS-BUILDING ORGANIZATION.—For purposes of this subsection, the term 'consensus-building organization' means an organization, such as the National Quality Forum, that the Secretary identifies as—

"(i) having experience in using a transparent process for reaching a group consensus with respect to measures relat-

ing to performance of hospitals providing inpatient hospital services; and

"(ii) including in such process representatives of the Secretary, hospitals, physicians' organizations, individuals entitled to benefits under part A, experts in health care quality, experts in measure development, organizations with experience in measure implementation, and individuals with experience in the delivery of health care in urban, rural, and frontier areas and to underserved populations and those who serve a disproportionate share of minority patients.

"(5) ALTERNATIVE MEASURES FOR PATIENT OUTCOMES AND EXPERIENCE.—

"(A) IN GENERAL.—In addition to the quality measures for clinical process selected by the Secretary under section 1886(b)(3)(B)(viii), the Secretary shall consider alternative methodologies to measure quality that reflect patient outcomes and patient experience of care measures. Of the alternative methodologies available for the consideration of the Secretary, quality measures under this paragraph shall be based

on a set of criteria that include importance, feasibility, scientific acceptability, improvability, usability, controllability, potential for unintended consequences, and contribution to comprehensiveness.

"(B) RISK-ADJUSTMENT.—With respect to quality measures for outcomes of care, the Secretary shall provide for an appropriate adjustment for such risk factors as age, disability status, gender, institutional status, and such other factors as the Secretary determines to be appropriate to maintain incentives for hospitals to treat patients with severe illnesses or conditions.

"(6) SUBMISSION OF DATA ON PROPOSED NEW QUALITY MEASURES.—

"(A) PRELIMINARY DATA SUBMISSION PERIOD.—With respect to any proposed new quality measure identified by the Secretary as a possible addition to specified quality measures in effect, data that are required to be submitted by hospitals for that new quality measure shall be submitted for a preliminary period of such length as the Secretary may specify.

"(B) CONFIDENTIALITY OF INFORMATION.—Any data submitted under subparagraph (A) during the preliminary data submission period shall be treated as a confidential submission of information and may not be made available to the public.

"(C) APPLICATION TO PERFORMANCE-BASED PAYMENTS.—A new quality measure may not be incorporated in the performance-based payment program established under subsection (f) unless—

"(i) the preliminary data submission period under subparagraph (A) is completed;

"(ii) the Secretary ensures that data have been made available to the public under subsection (e) for such period as the Secretary determines to be appropriate to provide adequate notice to the parties concerned; and

"(iii) the requirements of paragraph (3) have been met.

"(7) ALIGNMENT OF INPATIENT HOSPITAL QUALITY MEASURES WITH QUALITY MEASURES OF OTHER PROVIDERS AND SUPPLIERS.—

"(A) IN GENERAL.—The Secretary shall ensure that the specified quality measures applicable to hospitals are coordinated with quality measures applicable to physicians under section 1848(k) and with quality measures applicable to other providers of services and suppliers under this title.

"(B) USE OF QUALITY MEASUREMENT DEVELOPMENT ORGANIZATIONS.—If the Secretary determines that there is evidence that a complementary quality measure in a particular circumstance would improve the quality of patient care, the Secretary shall enter into arrangements with quality measurement development organizations for the development of complementary quality measures for hospitals, physicians, and other providers of services and suppliers.

"(C) CONDITION FOR SELECTION.—For purposes of paragraph (3), the Secretary may not accept the endorsement of a quality measure by the National Quality Forum or such other similar organization designated by the Secretary under paragraph (3)(A)(ii) unless the National Quality Forum or other organization

has ensured the alignment of the quality measure for inpatient hospital services with one or more related quality measures for physicians' services (if any).

"(c) DISCONTINUED USE OF MEASURES.—

"(1) AUTHORITY TO DISCONTINUE USE OF MEASURE.—The Secretary may terminate the use of a specified quality measure under this section if the Secretary determines that the continued use of the measure is inappropriate or unnecessary by reason of one or more of the following rationale:

"(A) A change in science, technology, or practice patterns.

"(B) Subject to paragraph (2), a determination by the Secretary that hospitals have achieved uniformly high performance with respect to that measure (commonly referred to as a 'topped out measure').

"(C) A determination by the Secretary that the measure has been subsequently shown not to represent the best clinical practice.

"(D) Such other considerations as the Secretary determines to be appropriate.

"(2) PROVISIONS RELATING TO TOPPED OUT MEASURES.—

"(A) CONTINUED REPORTING.—In the case of a specified quality measure referred to in paragraph (1)(B), the Secretary shall require the submission of data from hospitals on such a measure notwithstanding that such measures shall not be used for purposes of the performance-based payment program under subsection (f).

"(B) REVIEW OF HOSPITAL PERFORMANCE.—In the case of a specified quality measure referred to in paragraph (1)(B), the Secretary shall monitor performance of hospitals on such measure to ensure that hospitals maintain high levels of performance.

"(C) AUTHORITY TO REINSTATE.—

"(i) IN GENERAL.—Subject to clause (ii), for purposes of the performance-based payment program under subsection (f), the Secretary may reinstate the use of a specified quality measure referred to in paragraph (1)(B) that has been terminated under paragraph (1) if the Secretary determines that a significant percentage of hospitals fails to meet the performance threshold for that quality measure.

"(ii) NOTICE.—The authority under clause (i) shall not apply before the conclusion of a period, of not less than one year, of notice to the public indicating the intent of the Secretary to reinstate such specified quality measure.

"(3) REGULAR REVIEW OF MEASURES.—The Secretary shall periodically reassess specified quality measures to determine whether the continued use of such measures is appropriate and necessary for purposes of public reporting under subsection (e) and performance-based payment under subsection (f).

"(d) DEVELOPMENT OF COMPOSITE MEASURES.—

"(1) IN GENERAL.—The Secretary shall combine individual specified quality measures into composite measures that assess the overall quality of care for a clinical condition or in a performance area.

"(2) CONSIDERATIONS.—In carrying out paragraph (1), the Secretary shall—

"(A) evaluate the adequacy of individual specified quality measures in each significant clinical condition or performance area, including the validity of such measures for the creation of a composite measure; and

"(B) determine the best methodology to report composite quality measures for those areas of clinical practice with a limited number of specified quality measures, including how to incorporate such composite measures in the performance-based payment program under subsection (f).

"(e) PUBLIC REPORTING.—

"(1) CONTINUATION OF PUBLIC REPORTING REQUIREMENTS.—Procedures established under subclause (VII) of section 1886(b)(3)(B)(viii) for making data submitted by a hospital under subclause (I) of such section available to the public shall, as modified by the succeeding provisions of this subsection, apply to data required to be submitted under this section on all specified quality measures.

"(2) GENERAL REPORTING REQUIREMENTS.—The Secretary shall report quality measures of process, structure, outcome, patient perspectives on care, efficiency, and costs of care that relate to services furnished in inpatient hospital settings on the Hospital Compare Internet website maintained by the Department of Health and Human Services.

"(3) PROMPT DISSEMINATION OF INFORMATION ON QUALITY.—The Secretary shall review ways in

which information on the quality of inpatient hospital services can be used more effectively by hospitals to increase the quality of patient care and to improve performance in the delivery of inpatient hospital services. The Secretary shall provide for the dissemination of appropriate and timely quality information to such hospitals in a manner that most effectively contributes to continuous quality improvement by the hospitals.

"(4) DISSEMINATION ON QUALITY INFORMATION TO PATIENTS.—

"(A) IN GENERAL.—The Secretary shall make available to the public information on the quality of inpatient hospital services provided by hospitals to patients in a manner that facilitates informed and balanced decision-making by patients and physicians.

"(B) REQUIREMENTS FOR COMPARATIVE INFORMATION.—Insofar as the Secretary makes information on the quality of inpatient hospital services provided by hospitals to patients available for purposes of comparison among hospitals, the Secretary shall only present such information by specific clinical condition or performance area and may not aggregate results

across clinical conditions or performance areas or otherwise make available information indicating an overall ranking of hospitals.

"(5) WEBSITE IMPROVEMENTS.—

"(A) TAILORED STANDARD REPORTS.—The Secretary shall develop a series of standard Internet website reports tailored to respond to the differing needs of hospitals, patients, researchers, policymakers, and such other stakeholders as the Secretary may identify. The Secretary shall seek input from such stakeholders through such means as the Secretary determines to be most effective, including meetings and surveys, to determine the type of information that is useful to the various stakeholders and the format that best facilitates use of the reports and of the Hospital Compare Internet website maintained by the Department of Health and Human Services.

"(B) INFORMATION AND FORMAT.—The Secretary shall modify the Hospital Compare Internet website maintained by the Department of Health and Human Services to make the use and navigation of that website readily available to individuals accessing it. The Secretary shall

develop a flexible format to meet the differing needs of the various stakeholders and shall modify the website to permit a user to easily customize queries.

"(f) PERFORMANCE-BASED PAYMENT PROGRAM.—

"(1) ESTABLISHMENT.—The Secretary shall establish a program under which performance-based payments are made each fiscal year to hospitals that provide high quality inpatient hospital services to individuals who are entitled to benefits under part A and who are inpatients of the hospital. The Secretary shall implement the program under this subsection so that performance-based payments are made to such hospitals in fiscal year 2011 and each subsequent fiscal year.

"(2) ADJUSTMENT IN PAYMENT BASED ON QUALITY PERFORMANCE.—

"(A) PAYMENT BASED ON PERFORMANCE.—

"(i) INCREASE IN AMOUNT OF PAYMENT FOR OPERATING COSTS OF INPATIENT HOSPITAL SERVICES.—Subject to subparagraph (B), from payment amounts reduced by the Secretary for operational costs of inpatient hospital services of a

hospital for specified diagnosis-related groups under section 1886(d)(1)(F)(i) with respect to a fiscal year, the Secretary shall make a performance-based payment to that hospital for such costs for that fiscal year in the amount determined under clause (ii) and in the manner specified in section 1886(d)(1)(F)(iv).

"(ii) METHODOLOGY TO DETERMINE THE AMOUNT OF PAYMENT.—The Secretary shall determine the amount of the performance-based payment based on the hospital's performance on each specified clinical condition or performance area during the preceding year to individuals who are entitled to benefits under part A and are inpatients of the hospital using the payment and scoring methodologies contained in the Report to Congress submitted by the Centers for Medicare & Medicaid Services on November 21, 2007, as modified by the succeeding provisions of this subsection.

"(B) REQUIREMENT TO SUBMIT DATA.—In order for a hospital to be eligible for a perform-

ance-based payment with respect to a fiscal year, the hospital must have complied with the requirements under subsection (a)(1) to submit data for specified quality measures.

"(C) MEASURED CLINICAL CONDITIONS FOR PERFORMANCE-BASED PAYMENTS IN FISCAL YEAR 2011.—

"(i) CONDITIONS MEASURED.—With respect to performance-based payments made to a hospital under this paragraph in fiscal year 2011, the Secretary shall measure quality performance only for the following four specific conditions or clinical performance areas: acute myocardial infarction (AMI), heart failure, pneumonia, and Surgical Care Improvement Project (formerly referred to as 'Surgical Infection Prevention' for discharges occurring before July 2006).

"(ii) MEASURES CITED IN NOVEMBER 2007 CMS REPORT TO CONGRESS.—In measuring quality performance for the conditions specified under clause (i), the Secretary shall use the specified quality measures identified as initial performance meas-

ures in the report referred to in subparagraph (A)(ii).

"(iii) HCAHPS MEASURES EXCLUDED FROM INITIAL PERFORMANCE-BASED PAYMENTS.—

"(I) IN GENERAL.—In measuring quality performance under clause (i), except as provided in subclause (II), the Secretary may not include specified quality measures with respect to the Hospital Consumer Assessment of Healthcare Providers and Systems Survey (HCAHPS).

"(II) USE IN SUBSEQUENT YEARS.—Subject to subparagraph (D)(ii), the Secretary shall collect data on measures relating to assessment of care by consumers and make refinements to such measures for use in measuring performance for fiscal years after fiscal year 2011 for performance-based payments under this paragraph.

"(iv) 30-DAY MORTALITY MEASURES EXCLUDED FROM INITIAL PERFORMANCE-BASED PAYMENTS.—

"(I) IN GENERAL.—In measuring quality performance under clause (i), except as provided in subclause (II), the Secretary may not include specified quality measures with respect to mortality.

"(II) USE IN SUBSEQUENT YEARS.—Subject to subparagraph (D)(ii), the Secretary may include specified quality measures with respect to 30-day mortality rates for use in measuring performance for fiscal years after fiscal year 2011 for performance-based payments under this paragraph insofar as the Secretary establishes a mechanism for hospitals to receive timely information from the Secretary to enable hospitals to evaluate performance on such measures.

"(D) MEASURED CLINICAL CONDITIONS AND PERFORMANCE AREAS FOR FISCAL YEARS AFTER FISCAL YEAR 2011.—

"(i) IN GENERAL.—Subject to clause (ii), with respect to performance-based payments made to a hospital under this paragraph during a fiscal year after fiscal year 2011, the Secretary may expand the specified quality measures used in measuring performance under subparagraph (C) for performance-based payments under this paragraph for fiscal year 2011.

"(ii) REQUIREMENT FOR NOTICE AND COMMENT RULEMAKING.—The Secretary may only exercise the authority under clause (i) by regulation, after notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

"(E) ADVANCE PUBLICATION OF FULL-INCENTIVE BENCHMARKS.—The Secretary shall provide for the publication of full-incentive quality benchmarks (determined under paragraph (4)(C)) sufficiently in advance of a fiscal year so that hospitals may make such changes as are required to meet full-incentive quality benchmarks applicable during the fiscal year involved, and in no case shall the publication of

the full-incentive quality benchmark be later than two years before the start of the fiscal year involved.

"(3) DETERMINATION OF HOSPITAL PERFORMANCE.—

"(A) METHODOLOGY FOR SCORES.—The Secretary shall evaluate the performance of each hospital for the purpose of determining performance-based payments under paragraph (2). Subject to subparagraph (B), the Secretary shall determine a set of performance scores for each such hospital based on the performance scoring methodology described in the report referred to in paragraph (2)(A)(ii).

"(B) CALCULATION OF SEPARATE SCORES BY CLINICAL CONDITION OR PERFORMANCE AREA.—The Secretary shall calculate composite performance scores separately for each specified clinical condition or performance area. The Secretary may not calculate a single overall performance score for each hospital.

"(C) CONSIDERATION OF RESULTS AND IMPROVEMENT.—In calculating performance scores for each specified quality measure for each specified clinical condition or performance

area, the Secretary shall determine a score for both the performance level attained by the hospital and the degree of improvement of the performance of the hospital. The final score for each such measure shall be equal to the greater of such attainment or such degree of improvement on the measure.

"(D) EQUAL WEIGHT FOR INDIVIDUAL MEASURES.—In calculating a composite performance score for each specified clinical condition or performance area, the Secretary shall weight equally the individual specified quality measures involved in assessing performance for such clinical condition or area.

"(E) REQUIREMENT FOR NOTICE AND COMMENT RULEMAKING.—The Secretary shall describe in detail the methodology to be used to calculate performance scores under this subparagraph by regulation, after notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

"(4) CALCULATION OF PERFORMANCE-BASED PAYMENT AMOUNT.—

"(A) METHODOLOGY.—

"(i) REPORT PROPOSAL.—Subject to the succeeding provisions of this subsection, the Secretary shall calculate the amount of performance-based payment under paragraph (2) for a hospital by converting performance scores of a hospital to a payment amount for that hospital using the methodology contained in the report referred to in paragraph (2)(A)(ii).

"(ii) REQUIREMENT FOR NOTICE AND COMMENT RULEMAKING.—The Secretary shall describe in detail the methodology to be used to calculate the amount of performance-based payment under paragraph (2) by regulation, after notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

"(B) MINIMUM THRESHOLD.—

"(i) IN GENERAL.—The Secretary shall establish a performance threshold for a fiscal year of zero for all specified clinical conditions or performance areas.

"(ii) PERFORMANCE THRESHOLD.—No amount of performance-based payment

under paragraph (2) for a fiscal year may be made to a hospital unless the performance score of that hospital with respect a specified clinical condition or performance area during the preceding fiscal year exceeds the performance threshold established under clause (i).

"(C) FULL-INCENTIVE QUALITY BENCHMARK.—

"(i) IN GENERAL.—The Secretary shall determine for each fiscal year a performance level for each clinical condition or performance area under a quality benchmark which, if met by a hospital, would qualify the hospital to receive 100 percent of the performance-based payment amount available under paragraph (2) for the associated diagnosis-related groups.

"(ii) DETERMINATION OF LEVELS.—

"(I) INITIAL LEVEL.—The performance level referred to in clause (i) shall be initially set at a level that the Secretary determines that all hospitals can reasonably achieve.

"(II) MODIFICATION OF LEVELS.—The Secretary may revise the performance level set under subclause (I) to a higher level from time to time as hospital performance improves.

"(iii) CONSIDERATIONS IN SETTING LEVELS.—In determining such performance level, the Secretary shall take into account practical experience with specified quality measures involved, historical performance levels, improvement rates, the opportunity for continued improvement, and the results of the review of benchmarks conducted under paragraph (5).

"(5) REVIEW AND MODIFICATION OF BENCHMARKS.—

"(A) IN GENERAL.—The Secretary shall reevaluate a quality benchmark established under this subsection if the Secretary determines with respect to a fiscal year that a significant proportion of hospitals failed to meet the benchmark. The Secretary shall determine whether extenuating circumstances, such as measure definition changes, prevented hospitals from meeting the benchmark.

"(B) MODIFICATION FOR PERFORMANCE-BASED PAYMENTS.—The Secretary may make modifications to a benchmark described in subparagraph (A), as applied to measure hospital performance in a fiscal year, and reassess such hospital performance in that fiscal year using such modified benchmark for purposes of calculating the amount of performance-based-payment under paragraph (2).

"(6) BUDGET NEUTRALITY FOR PAYMENTS.—

"(A) REQUIREMENT FOR BUDGET NEUTRALITY.—The aggregate amount available for performance-based payments to hospitals under paragraph (2) with respect to a fiscal year may not exceed the aggregate amount of reductions described in subsection (g)(1) for the fiscal year and such performance-based payments shall be designed in a manner so that the aggregate of such payments for a fiscal year is equal to the aggregate amount of such reductions for the fiscal year.

"(B) METHOD AND TIMING.—Performance-based payments to hospitals under this subsection shall be made from the Federal Hospital Insurance Trust Fund under section 1817.

Performance-based payments shall be made to a hospital under this subsection with respect to a fiscal year based on quality performance for the 12-month period ending June 30th of the prior fiscal year.

"(7) PERFORMANCE-BASED BONUS PAYMENT FOR HIGHEST PERFORMING HOSPITALS.—

"(A) IN GENERAL.—The Secretary shall establish a program to reward those hospitals with high performance scores, as determined by the Secretary, in a fiscal year through the making of performance-based bonus payments.

"(B) ADDITIONAL PAYMENT.—Performance-based bonus payments made under the program established in subparagraph (A) in a fiscal year shall be in addition to performance-based payments made under paragraph (2) in that fiscal year.

"(C) DETERMINATION OF PAYMENT AMOUNT.—Performance-based bonus payments under the program established in subparagraph (A) shall be made in such amount as the Secretary determines to be appropriate.

"(D) REQUIRED AGGREGATE AMOUNT OF PAYMENTS.—The Secretary shall make aggre-

gate payments in a fiscal year under the performance-based bonus payment program established in subparagraph (A) in an amount equal to the difference between the aggregate amount of reductions under section 1886(d)(1)(F)(i) for the fiscal year involved and the aggregate amount of performance-based payments made under paragraph (2) for such fiscal year.

"(8) ADDITIONAL PERFORMANCE-BASED INCENTIVE PAYMENTS.—

"(A) INDEPENDENT ACTUARIAL ESTIMATE OF SAVINGS.—With respect to each fiscal year beginning after fiscal year 2009, the Secretary shall enter into arrangements for the analysis by a qualified independent entity or organization of the actuarial value of cost savings under part A attributable to the improvement in the delivery of inpatient hospital services by hospitals by reason of this section.

"(B) PERFORMANCE-BASED INCENTIVE PAYMENT FUND.—

"(i) IN GENERAL.—Amounts identified as savings under subparagraph (A) for a fiscal year shall be available to the Secretary to make performance-based pay-

ments in addition to those available under paragraphs (2) and (7) as incentives to hospitals to continue to improve the quality of inpatient hospital services provided to patients.

"(ii) INCENTIVE PAYMENTS.—Additional payments under clause (i) shall be made in such form, manner, and periodicity as the Secretary may specify, and may include payments to physicians furnishing physicians' services as part of inpatient hospital services based on the results of performance measures on quality of care furnished and volume of patients treated.

"(9) ALTERNATIVE PERFORMANCE MEASURE.—

"(A) IN GENERAL.—The Secretary shall evaluate the appropriateness of applying an alternative method for the measurement of the quality of care provided by hospitals to individuals who are entitled to benefits under part A and who are inpatients of the hospitals.

"(B) METHODOLOGY.—The alternative method under subparagraph (A) shall measure the extent to which such individuals are reliably

being provided evidence-based care by hospitals, expressed as the percentage of occasions on which a hospital provides the individual with all of the appropriate actions identified under quality measures during a fiscal year.

"(C) PUBLIC AVAILABILITY.—The Secretary shall measure the performance of hospitals using the alternative method under subparagraph (A), and shall make the results of such performance measurement available to the public.

"(D) USE FOR EVALUATION OF FUTURE MEASURES.—The Secretary shall evaluate the appropriateness of using the alternative measure under subparagraph (A) for the purpose of making performance-based payments under this subsection.

"(g) FINANCING.—

"(1) REDUCTION IN DRG PAYMENT AMOUNT.—The Secretary shall make performance-based payments under paragraphs (2) and (7) of subsection (f) from amounts credited to the Federal Hospital Insurance Trust Fund under section 1817 in the fiscal year by reason of the application of the reduction under section 1886(d)(1)(F)(i).

"(2) NO EFFECT ON ADJUSTMENTS FOR OUTLIER, IME, DSH, OR CAPITAL-RELATED COSTS.—The adjustments under paragraphs (5)(A), (5)(B), and (5)(F) of section 1886(d), and payments for capital-related costs under section 1886(g), shall be computed without regard to the adjustments made by reason of section 1886(d)(1)(F).

"(h) PROVISIONS RELATING TO DATA SUBMISSION.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, each hospital shall submit data on measures selected under this section to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of subsection (a).

"(2) DATA SUBMISSION AND RESUBMISSION.—

"(A) PERIOD FOR SUBMISSION AND VALIDATION.—The Secretary shall provide a 135-day period after the close of a calendar quarter for hospitals to submit data required under subsection (a) for such quarter.

"(B) RESUBMISSION PERIOD.—

"(i) IN GENERAL.—Subject to clause (ii), insofar as an additional period of time is required after the end of the 135-day

period referred to in subparagraph (A) to correct errors with respect to the data submitted by hospitals, the Secretary shall provide for an additional 30-day period, beginning on the day after the date of the end of such 135-day period, for the correction of such errors and resubmission of the revised data.

"(ii) EXCEPTION.—The Secretary may not provide for an additional 30-day period under clause (i) if the data submitted by the hospital have been used to determine an amount performance-based payments under subsection (f) for that hospital.

"(C) REPORT ON SHORTER TIMEFRAME.—The Secretary shall submit to Congress a report on the feasibility and advisability of reducing the length of the 135-day period under subparagraph (A) to 60 days for the submission and validation of data.

"(3) VALIDATION OF DATA.—

"(A) IMPLEMENTATION OF PROCESS.—The Secretary shall implement a process for the validation of data submitted by hospitals under

subsection (a). Such process shall provide for the selection of hospitals with respect to data submitted by such hospitals on both a random basis and on the basis of specific criteria, and shall include standards for the validation of data at the level of specified quality measures.

"(B) VALIDATION FOR NEW QUALITY MEASURES.—With respect to proposed new quality measures, the Secretary shall not establish standards for the validation of data for the period of time that the Secretary determines hospitals require to gain experience with the new quality measures to properly report data with respect to such measure. The Secretary may use processes such as re-abstraction and validation as a learning tool for hospitals instead of establishing such standards.

"(4) OPPORTUNITY TO REVIEW DATA.—The Secretary shall provide a hospital the opportunity to review data reported by the hospital before such data is made available to the public under subsection (e) or used for purposes of the performance-based payment program under subsection (f).

"(i) RULE OF CONSTRUCTION WITH RESPECT TO APPEAL RIGHTS.—Nothing in this section shall be con-

strued as effecting the right of a subsection (d) hospital to seek reconsideration or judicial review under section 1869, 1878, or otherwise of a determination of the Secretary with respect to the provisions of this section, including the application of the performance-based payment program.

"(j) REPORTS TO CONGRESS.—

"(1) QUALITY ASSESSMENTS.—The Secretary shall conduct assessments of the quality measurement and performance-based payment program under this section, which shall be used in developing the reports under paragraph (2).

"(2) REPORTS BASED ON ASSESSMENTS.—The Secretary shall submit to Congress by not later than March 31, 2012, and every 18 months thereafter, a report that—

"(A) identifies the accomplishments of the program under this section;

"(B) identifies any unintended consequences of such program for hospitals and patients;

"(C) provides recommendations for legislative and other modifications to the program;

"(D) includes evidence indicating changes in access to, quality of, and efficiency and outcomes in care related to the program;

"(E) assesses the program's impact on disparities in care by race and ethnicity; and

"(F) identifies the impact of the program on hospitals of differing size and patient acuity levels, including safety net hospitals and hospitals with a substantial medical education commitment.

"(3) GAO EVALUATION.—Not later than September 30, 2012, the Comptroller General shall conduct an independent evaluation of the impact of the program under this section on hospitals and patients. Such evaluation shall include the items described in paragraph (2) as well as barriers to the program achieving its full potential.".

(b) CONFORMING AMENDMENTS TO QUALITY REPORTING AND PAYMENT UNDER INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.—

(1) REPORTING OF QUALITY DATA.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (i), by inserting "and subject to section 1886A(a)(1)," after "during a fiscal year,"; and

(B) in the first sentence of clause (viii)(I)—

(i) by inserting after "each subsequent fiscal year" the following "before 2014"; and

(ii) by inserting before the period at the end the following: "(or 1.5, 1.0, and 0.5 percentage points in the case of fiscal years 2011, 2012, and 2013, respectively)".

(2) ADJUSTMENT TO PAYMENTS FOR OPERATING COSTS OF INPATIENT HOSPITAL SERVICES.—Section 1886(d)(1) of such Act (42 U.S.C. 1395ww(d)(1)) is amended by adding at the end the following new subparagraph:

"(F) ADJUSTMENT FOR PERFORMANCE-BASED PAYMENT PROGRAM.—

"(i) TARGETED REDUCTIONS.—

"(I) IN GENERAL.—Subject to subclause (II), in the case of a subsection (d) hospital that complies with the data submission requirements

under section 1886A(a)(1) for a fiscal year, beginning with fiscal year 2011, the Secretary shall reduce the amount of the payment with respect to the operating costs of inpatient hospital services determined under subparagraph (A) for specified diagnosis-related groups (as defined in clause (ii)) for that fiscal year by the performance-based payment offset percent (as defined in clause (iii)).

"(II) EXCEPTION.—There shall be no reduction under subclause (I) by reason of clause (ii)(II) before fiscal year 2012.

"(ii) SPECIFIED DIAGNOSIS-RELATED GROUPS DEFINED.—

"(I) DIAGNOSIS-RELATED GROUPS EVALUATED UNDER COMPOSITE PERFORMANCE MEASURES.—For purposes of clause (i) and subject to subclause (II), the term 'specified diagnosis-related groups' means only those diagnosis-related groups that are evaluated through specified qual-

ity measures (as defined in section 1886A(a)(4)(A))—

"(aa) that are used for a fiscal year to measure the performance of a subsection (d) hospital under section 1886A(f) for purposes of performance-based payments to that hospital under paragraph (2) or (7) of such section;

"(bb) that have been recommended by the Hospital Quality Alliance; and

"(cc) data from which are made publicly available through the use of the Hospital Compare Internet website maintained by the Department of Health and Human Services (or such similar website of the Department) as meets the requirements of section 1886A(e).

"(II) ACROSS THE BOARD APPLICATION FOR HCAHPS.—With respect only to specified quality measures re-

lating to the Hospital Consumer Assessment of Healthcare Providers and Systems Survey (HCAHPS) and for which a diagnosis-related group is eligible to report, such term includes a group. Nothing in this subclause shall be construed as applying a reduction under this subparagraph to hospitals that are not subsection (d) hospitals.

"(iii) PERFORMANCE-BASED PAYMENT OFFSET PERCENT.—

"(I) IN GENERAL.—For purposes of clause (i) and subject to subclauses (II) and (III), the term 'performance-based payment offset percent' means the percent determined by the Secretary for a fiscal year that results in aggregate reductions in payments under clause (i) in that fiscal year in an amount equal to the aggregate amount of performance-based payments that the Secretary elects to make under section 1886A(f)(2) for that fiscal year.

"(II) INDIVIDUAL MAXIMUM OFFSETS.—Subject to subclause (III), in no case may the percent determined under subclause (I) for a fiscal year exceed—

"(aa) with respect to specified quality measures described in clause (ii)(I), 2.0 percent; and

"(bb) with respect to specified quality measures described in clause (ii)(II), 0.25 percent.

"(III) AGGREGATE MAXIMUM OFFSET.—In no case may the percent determined under subclause (I) for a fiscal year exceed—

"(aa) 0.50 percent for fiscal year 2011;

"(bb) 1.0 percent for fiscal year 2012;

"(cc) 1.5 percent for fiscal year 2013; and

"(dd) 2.0 percent for fiscal year 2014 and succeeding years.

"(iv) INCREASE IN PPS PAYMENT AMOUNT FOR PERFORMANCE-BASED PAY-

MENT.—In the case of a subsection (d) hospital that received a performance-based payment under paragraph (2) or (7), or both, of section 1886A(f) for a fiscal year for a specified diagnosis-related group, the amount of the payment with respect to the operating costs of inpatient hospital services determined under subparagraph (A) for such specified diagnosis-related group shall be increased by the amount of such performance-based payment or payments for that fiscal year.".

SEC. 3. CONSULTATION FOR APPROPRIATE APPLICATION OF PERFORMANCE-BASED PAYMENTS TO SMALL HOSPITALS.

(a) CONSULTATION.—The Secretary of Health and Human Services shall consult with representatives of small hospitals, including critical access hospitals under section 1820 of the Social Security Act (42 U.S.C. 1395i–4), to determine appropriate and effective methods for such hospitals to participate in programs for performance-based payments for inpatient hospital services (or inpatient critical access hospital services) furnished to individuals who are entitled to benefits under part A of title XVIII of the

Social Security Act (42 U.S.C. 1395c et seq.) and who are inpatients of the hospitals.

(b) CONSIDERATION.—The Secretary shall consider innovative methods of measuring and rewarding quality inpatient hospital services furnished by small hospitals, including critical access hospitals, which may be difficult to quantify due to the low volume of services provided by such hospitals for which quality measures have been developed.

(c) REPORT TO CONGRESS.—Not later than two years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the consultation required under this section. The report shall include recommendations of the Secretary with respect to the appropriate application of performance-based payment and payment incentive programs to small hospitals, including critical access hospitals, for the provision of quality inpatient hospital services.

SEC. 4. PRIORITY OF ASSISTANCE FROM QUALITY IMPROVEMENT ORGANIZATIONS AND OTHER QUALITY ORGANIZATIONS FOR HOSPITALS WITH RESULTS BELOW PERFORMANCE-BASED PAYMENT BENCHMARKS.

(a) PRIORITY OF ASSISTANCE TO LOW-PERFORMING HOSPITALS.—Section 1154(a) of the Social Security Act

(42 U.S.C. 1320c–3(a)) is amended by adding at the end the following new paragraph:

"(18)(A) The organization shall give priority in the provision of quality improvement assistance to subsection (d) hospitals that fail to meet quality benchmarks established under section 1886A(f).

"(B) In this paragraph, the term 'quality improvement assistance' includes the following:

"(i) Education on quality improvement initiatives, strategies, and techniques.

"(ii) Instruction on how to collect, submit, aggregate, and interpret data on measures used for quality improvement, public reporting, and payment under section 1886A.

"(iii) Technical assistance to support quality improvement.

"(iv) Technical assistance and instruction in the conduct of root-cause analyses.

"(v) Facilitating adoption of procedures that encourage timely candid feedback from patients and their families concerning perceived problems.

"(vi) Guidance on redesigning clinical processes, including the adoption and effective use

of health information technology, to improve the coordination, effectiveness, and safety of care.".

(b) EVALUATION OF QUALITY IMPROVEMENT ORGANIZATIONS.—Section 1153(c)(2) of such Act (42 U.S.C. 1320c–2(c)(2)) is amended by inserting before the semicolon at the end the following: ", including the effectiveness of the organization in improving the ability of a hospital referred to in section 1154(a)(18)(A) to meet quality benchmarks established under section 1886A(f)".

(c) ASSISTANCE FROM ALTERNATIVE QUALITY ORGANIZATIONS.—Section 1886A of the Social Security Act, as inserted by section 2(a), is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection (j):

"(j) ASSISTANCE FROM ALTERNATIVE QUALITY ORGANIZATIONS.—

"(1) PRIVATE QUALITY ORGANIZATIONS.—The Secretary shall establish a program under which a hospital seeking to improve the quality of the provision of inpatient hospital services based on the results of a performance evaluation under this section may apply to the Secretary to receive quality improvement assistance from a private quality organi-

zation with expertise in supporting improvement in the quality of the provision of inpatient hospital services.

"(2) ACCREDITATION.—Before entering into arrangements with a private quality organization for the provision of assistance under paragraph (1), the Secretary shall ensure that the organization has been accredited or certified by a recognized accreditation or certification agency or body.

"(3) PAYMENT.—The rate of payment for quality assistance services provided by a private quality organization under paragraph (1) shall be negotiated by the Secretary. Payment shall be made by the Secretary from funds made available under part B of title XI title for the payment of organizations with contracts with the Secretary under such part.".

(d) NQF FUNDING AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Health and Human Services $10,000,000 for each of 5 fiscal years to enter into arrangements with the National Quality Forum for the development of quality measures that may be applied under section 1886A of the Social Security Act, as inserted by section 2(a).

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